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SUNDAY SELLING

by

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SUNDAY SELLING

SUNDAY SELLING at roadside stores and suburban shopping centers, often promoted by extensive display advertising, has been stirring up controversy in various parts of the country. Law enforcement authorities, pressed by "Save Sunday" crusaders to prosecute at least the principal offenders, have had to rely on ancient laws designed to keep the Sabbath holy by the standards of another day. These laws in many cases have proved inadequate to the task in hand. That task essentially is not to regulate personal conduct, as attempted by the blue laws of colonial times, but to curb or eliminate practices considered by some people either objectionable in themselves or unfairly competitive from a commercial standpoint. The question of Sunday closing still has moral overtones, but the business aspects are of growing importance. Sunday selling, meanwhile, continues on the increase, presumably because many families find it greatly to their convenience.

Efforts to enforce old but rarely invoked Sunday laws have led to litigation involving difficult questions in the relationship between church and state. High state courts have recently handed down important decisions in these cases. Convictions for Sunday selling and injunctions to restrain interference with such selling now appear headed for the U.S. Supreme Court and final verdicts on the constitutionality of the present statutes. Whatever the decisions, state legislatures already are being pressed to clarify and strengthen existing legislation affecting commercial activity on Sunday.

Agitation for Sunday closing of stores dealing in general merchandise has come alike from churches seeking stricter observance of the Christian Sabbath and from downtown merchants whose business is hurt by Sunday selling in outlying districts. Counter-pressure has been brought to bear by spokesmen for Jews and Seventh-Day Adventists, who observe Saturday as the Sabbath, and by retailers who do

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a large part of their business on Sunday. Others, including some religious leaders, are torn between distress at profanation of the Lord's Day and belief that Sunday closing laws encroach on religious liberty.

MUSHROOMING OF ROADSIDE DISCOUNT STORES

Prosecution of Sunday merchants has followed directly on mushrooming of "super-bargain" stores in the suburbs of large cities and along the highways. Most stores of this kind stay open on Sunday for business as usual. Their Sunday operations, which have grown tremendously during the past decade, differ completely from older forms of Sunday selling. Selling on Sunday used to be confined chiefly to drug stores, delicatessens, and roadside vegetable stands, and they were commonly tolerated even in states in which they were technically subject to Sunday bans on retail trade. The stores either were small and unobtrusive or provided articles of necessity; open for a few hours or longer, their Sunday activity did not intrude on the placid atmosphere associated with the day.

In contrast, the newer types of Sunday stores are big and showy; they sell a limitless variety of bulky merchandise—furniture, household appliances, clothing, etc.—and they draw crowds of customers. Splashy advertising, usually in full-page Sunday newspaper displays emphasizing price cuts, encourages family shopping expeditions. Discount houses were the first to promote Sunday selling, and their success drew other retail stores to neighboring sites. Supermarkets began to open on Sunday, and small roadside enterprises that formerly served only passing Sunday motorists expanded into full-scale retail establishments. Drug stores, usually exempt from Sunday-closing bans, turned themselves into virtual department stores and built up a large volume of Sunday business. Main roads near some metropolitan centers became dotted if not lined with stores and parking lots which attracted increasing numbers of Sunday customers.

Most downtown stores could not meet competition beyond the city limits by opening their own doors on Sunday. Some were forbidden to do so under ordinances that did not apply in adjacent areas; even if there was no legal bar to opening, the downtown location was a handicap on a day when families took to the road. A number of big stores tried to meet the competition by taking telephone

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orders for articles advertised in the Sunday newspapers. Others opened branches in the suburbs to get the Sunday trade. But most city merchants in areas where Sunday selling of this type was new sought to mobilize church support in a campaign for prosecution of their competitors under old and long-neglected Sabbath laws.

No estimate of the size of the Sunday retail market has been made, but it is believed to run into billions of dollars, and there is every indication that it is spreading despite efforts to enforce closing laws.¹ The expansion has occurred largely among discount houses, clothing, appliance, hardware, and food stores and among automobile dealers. A survey by the Super Market Institute of 1,200 markets opened in 1957 showed that 27 per cent did business on Sundays, whereas only 5 per cent of all supermarkets had remained open on Sunday in 1950.² Sunday selling is most prevalent in the Far West, where there has been little agitation against it. The current marked expansion is taking place in the East and Middle West, where in many communities to open or not to open on Sunday has become a burning issue.

Before New Jersey enacted new restrictive legislation last year, it was estimated that Sunday sales along the main highways of that state amounted to \$100 million a year. One count showed that "there are possibly 50 out of around 600 highway merchants who sell \$1 million worth each annually on Sunday."³ Some stores did as much as 40 per cent of their total business on that day.

The widespread impact of Sunday selling on the business of conventional stores was made apparent by pleas for Sunday closing made in 1958 and again in 1959 by the National Retail Merchants Association⁴ and the Variety Stores Association, which together represent 20,000 retail outlets throughout the country. The N.R.M.A. noted that "Sunday openings create public relations problems for retailing." The Variety Stores expressed fear that "Sunday selling, now limited to a relatively few sections of the country will, unless checked, spread rapidly," and that "family,

¹ Joseph E. Ritter, Roman Catholic Archbishop of St. Louis and a leading Sunday-closing crusader, said in a letter to fellow priests last summer that "indications are we are losing ground in the struggle to maintain Sunday as the Lord's Day."

² Thomas Kenny, "Sunday Selling Spreads," *Dun's Review and Modern Industry*, February 1958, p. 38.

³ "The Sunday Driver Becomes Big Market," *Business Week*, June 8, 1957, p. 66.

⁴ Formerly the National Retail Dry Goods Association.

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religious and business life of every community will be changed by Sunday selling."

FACTORS STIMULATING SUNDAY SALES GROWTH

The upsurge of Sunday shopping is attributable to a combination of factors associated with basic changes in the character of family life—increased purchasing power, suburban living, a worldly approach to Sabbath obligations, and almost universal dependence on the automobile. In a motorized society the roadside has become the ideal site for retail operations because it is there that parking problems are at a minimum; and Sunday is a favored day for shopping, because it is then that the whole family has use of the automobile.

Growth of employment among married women, the custom of going for a ride on Sunday, the leisure available then to "look around," the availability of the father to help look after the children—all have enlarged the commercial potential of Sunday retailing. Shopping on that day, moreover, appears to have become a pleasurable pastime. Many persons are said to have replied, when questioned, that they went shopping on Sunday because it was fun. Free hot dogs and coffee, play equipment for the children, and other attractions have added a carnival touch to some Sunday bargain centers.

However popular it may be, Sunday shopping on the order of that now often prevailing has evoked protests from influential segments of the urban community. Antagonism has been aroused not only among church leaders and city merchants, but also among citizens who feel that the traditional character of Sunday is adversely affected by the bustle and commercialism of the shopping centers. It has been asserted that Sunday shoppers create traffic jams and safety hazards. Labor unions in some communities have joined the crusade against Sunday selling on the ground that it imposes hardship on employees.

CHURCH CAMPAIGNS AGAINST SUNDAY SHOPPING

The Catholic Church in the past decade has taken leadership of the battle against Sunday commercialism, assuming a role that had been traditionally held by Protestant denominations. Protestant ministers continue active in local "Save Sunday" drives, and the 74-year-old Lord's Day Alliance still campaigns for stricter Sunday laws, but Prot-

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estant churches as a whole have not presented as solid a front as Catholic in demanding stiff civil penalties for Sabbath violators. Opposition to Sunday laws comes naturally from Jews and Seventh-Day Adventists.

Virtually every Catholic prelate in areas where Sunday selling is allowed has delivered sermons or issued special pronouncements favoring strong legislation to stop the practice. When the *Advocate*, official organ of the archdiocese of Newark, began a Sunday closing campaign five years ago, it solicited the views of New Jersey legislators on Sunday closing laws and published their responses in successive issues. This and other activity led eventually to revision of the state law.

National Catholic lay organizations have circulated pledge cards, automobile bumper stickers, and posters among opponents of Sunday selling and among stores which agree to close on Sunday. An instruction sheet on how to conduct a community campaign against Sunday selling, prepared by the National Council of Catholic Women, urges individuals to write letters to store managers stating that "you have no intention of initiating a boycott but you are asking your members to patronize on week-days those stores which remain closed on Sunday."

Bishop George J. Rehring of Toledo told his flock in a pastoral letter in April 1958 to "give extra consideration throughout the week" to merchants who are closed on Sunday, so they won't "lose out to their conscienceless competitors."

While Protestant leaders are equally concerned that the Lord's Day be properly respected, they are not of one mind on the best way to combat Sunday commercialism. The division of opinion was indirectly disclosed in a "study document" issued last June by the National Council of the Churches of Christ in the U.S.A. to guide member churches in dealing with "problems resulting from the increased trend toward economic activity on Sunday." The document noted that legislation to ban Sunday selling was "sometimes sought by economic forces as a means to remove . . . competition, rather than for bona fide protection of Sunday as a religious day." It reported, moreover, that the "general consensus, coming from numerous areas where community-wide efforts against economic encroachments on Sunday have developed, points unquestionably to the

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greater value and dependability of solutions reached by voluntary agreement rather than by legislative fiat." ⁵

COMMUNITY CONFLICTS OVER SUNDAY RETAILING

Where community pressure has resulted in tightening of Sunday closing laws and prosecution of Sunday merchants, it has been made effective by combining the efforts of Catholic and Protestant churches with those of local commercial interests, sometimes joined by local labor unions. In Cleveland these groups formed an organization, Sunday, Inc., which succeeded in getting warrants issued for arrest of "prime violators" of Sunday closing ordinances. Other retailers, however, have created an organization called Freedom Enterprises to work for repeal of Sunday laws.

In Portland, Ore., a Family Day Observance Committee, formed by Catholic, Protestant and business groups and headed by a Methodist minister, wrote to 1,800 merchants in the area, urging Sunday observance. In St. Louis a Coordinating Committee Opposed to Sunday Retail Selling campaigned for more vigorous enforcement of existing bans. The Citizens Committee for Sunday Closing in Newark, and similar groups in other New Jersey communities, raised money to promote their cause on the eve of local referenda on the issue.

A recent American Jewish Committee study supported the view that "Save Sunday" campaigns are most successful when the downtown business community joins with the churches to eliminate Sunday commercialism. The study cited two unsuccessful efforts by church groups working alone: the Greater Miami Ministerial Association and the Greater Miami Council of Churches gathered 12,000 signatures on a petition for a proposed Sunday closing ordinance, but the ordinance was rejected by municipal legislators; an attempt by Pontiac, Mich., pastors to get the question of all-day Sunday closing of taverns submitted to the voters failed last year for lack of the number of signatures necessary to put the question on the ballot.

Commercial interests of communities sometimes conflict with the demands of church groups. On the eve of a community-wide straw vote on Sunday closing in Spartanburg, S. C., last summer, a large company announced that it

⁵ National Council of the Churches of Christ in the U.S.A., *Economic Pressures and Sunday Observance*, June 1962, pp. 5-6.

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would not go ahead with plans for a multimillion-dollar expansion of its establishment unless assured that it could go on a seven-day-week operation. Among the reasons Gov. George Dewey Clyde of Utah gave for vetoing a strong Sunday closing law last year was that it would jeopardize the state's seasonal food-processing industry and might force abandonment of continuous operations in the state's copper mines.¹

In some places a local Sunday closing order has simply had the effect of sending shoppers along the highway to a point where Sunday selling flourishes. This is what happened when a ban was imposed two years ago in Paramus, N. J. Roadside merchants within the limits of Paramus asked the state supreme court for an injunction against enforcement of the prohibition, but their plea was turned down. Because of inequities of this kind, pressure for stronger Sunday closing laws has moved from local communities to state legislatures.

Laws and Litigation on Sunday Closing

THE FIRST DECREE to impose civil restrictions on Sunday activities was promulgated in 321 A.D. by the Roman emperor Constantine; it banned all work, except by farmers, on the Lord's Day. Sunday observance laws were common on the continent of Europe and in England both before and after the Reformation. All of the original American colonies had laws requiring church attendance and forbidding work, travel, sports, and commerce on the Sabbath.⁶ Fines, whippings, and confinement to the stocks were the usual penalties. The laws were most strictly enforced in Puritan New England and least observed in the Anglican South. After the Revolution, most states moderated the provisions of the Sunday laws, but they retained prohibitions on buying, selling and labor, except for necessity or charity, and on hunting, fishing, and the like.⁷

⁶ The first, enacted in Virginia in 1610, imposed a death penalty on third offenders, but there is no record that capital punishment was ever inflicted.

⁷ It was at this time that Sunday laws began to lose the character of blue laws, a term first applied to legislation of the New Haven Colony in Connecticut that pertained primarily to personal conduct. The present Sunday law of New York State prohibits "all labor on Sunday . . . excepting the works of necessity and charity," which are defined as "whatever is needful during the day for the good order, health or comfort of the community."

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As the secular spirit grew dominant in American society, enforcement of Sunday laws tended to become lax despite periodic agitation on the subject. However, the practice of closing up shop on Sunday, reinforced by the recognized need of industrial workers for one day of rest in seven, remained firmly entrenched in law and custom. A trend toward further liberalization of Sunday laws gained headway after the Civil War. In the present century there has been marked relaxation of bans on commercial sports and entertainment on the Sabbath, at least during afternoon hours not coinciding with the usual time of divine services. Some states have given localities the right to decide what to allow on Sunday, with the result that Sunday activity has become freer in populous metropolitan centers than in the more conservative small towns or in country districts.

LIBERALIZATION OF THE ORIGINAL SUNDAY LAWS

Frequent amendment of Sunday laws, coupled with the tendency of lawmakers to retain obsolete provisions in the absence of concerted demands for their removal, have left the statutes a confusing mixture of what can and what cannot be done on the Lord's Day. Commonwealth Attorney William Hassam told the Arlington County (Va.) Board last Jan. 16 that he would try to enforce the Sunday law of Virginia more rigidly if its provisions were clearer. A Cincinnati police court judge last year characterized Ohio's Sunday law as "inequitable, anachronistic, and a hodgepodge of inconsistencies."

Many changes have been made in Sunday laws to meet demands of commercial interests for exemptions that were widely favored by the public. Such exemptions have applied to railroads, public utilities, communications services, automobile repair shops, newspaper plants, drug stores, restaurants, certain types of manufacturing plants, and vendors of cigarettes, candy and other small items. Some of the exemptions seem far removed from the classification of necessity or charity. North Dakota, for example, exempts not only public utilities and feed merchants but also bootblacks and popcorn stands. Massachusetts in 1957 made an exception for frozen custard stands—about the 70th modification of a law which originally penalized "whoever on the Lord's Day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity or charity."

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Some states repealed their general Sunday laws and substituted bans on specific activities. Arkansas, Iowa and North Carolina are among states which have followed this course in the past decade. California repealed its basic law as far back as 1883 and now forbids only boxing and wrestling on Sunday; Colorado, whose general law was repealed in 1916, now has a Sunday ban only on barbering, boxing and pawnbroking. Arizona forbids only barbering; Montana keeps dance halls and pool rooms as well as barber shops closed. A few other western states have minor restrictions of a like nature on Sunday activities.

A majority of states retain general bans on Sunday selling, and around a dozen of them exempt storekeepers who observe another day as the Sabbath. But Sunday selling by the exempted merchants is not unrestricted. The Massachusetts law allows Jewish stores which close on Saturday to sell only kosher meat on Sunday, and only between the hours of 6 and 10 A.M.

INCONSISTENCIES IN EXISTING SUNDAY STATUTES

The curious patchwork of Sunday law resulting from the numerous exemptions is illustrated by the following partial list of provisions in the New York law: Bread and cakes may be sold on Sunday but not uncooked meat; butter and cheese sales are prohibited after 10 A.M. unless sold in a delicatessen, where sales between 4 and 7:30 P.M. are legal. Tobacco may be sold but not pipes, tires but not automobiles, newspapers but not books. Wrestling, boxing and polo are prohibited, but baseball, basketball and hockey are allowed after 2 P.M., subject to local law.⁸

The inconsistencies of Sunday laws have suggested to their opponents the tactic of demanding enforcement of the existing statutes in their entirety against all violators. Sunday merchants near Cincinnati made such a demand recently as the first gambit in a campaign for repeal. When theater owners in Spartanburg County, S. C., barred from Sunday showings, demanded that the law be applied against all violators, police launched a drive that netted 1,000 arrests on three Sundays last summer. Several magistrates complained of overwork, the sheriff said he needed more manpower, and one judge noted that it cost the state \$25 to collect a \$1 fine. In this case the law stayed on the

⁸ Leo Pfeffer, *Church, State and Freedom* (1953), pp. 232-233.

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books, but enforcement lapsed and Sunday selling continued. The late Sen. William Langer (R N.D.) had a different experience more than 40 years ago. As attorney general of North Dakota in 1917, he was one of the first to engage in wholesale enforcement in a successful move to compel the legislature to revise an obsolete Sunday law.

RECENT LEGISLATION AFFECTING ROADSIDE STORES

Recent Sunday legislation, like some of the earlier revisions, has been directed at specific enterprises; in the present instance, targets are the large roadside stores, usually discount houses, which sell major consumer goods on Sunday. New Jersey enacted a law in May 1959 which prohibited Sunday sales of clothing, home and office appliances and furnishings, lumber and building materials after Nov. 15 in counties whose voters approved the ban by referendum in the November election.⁹

The question was placed on the ballot in 15 of the state's 21 counties, and was acted on favorably in 12 counties. The law prescribes penalties of \$25 for a first violation, \$25-\$100 for a second, \$100-\$200 and 30 days in jail for a third, and \$200-\$500 and imprisonment for from 30 days to six months for a fourth violation. In the counties where the ban applies, it has not closed down some of the big stores on Sundays, but it has limited their sales to small personal items.¹⁰ A new Pennsylvania law, approved last August, forbids Sunday sales of clothing, furniture, housewares, appliances, hardware, tools, building supplies, clocks, watches, luggage, musical instruments, recordings, toys and furnishings. Penalties for a first offense were increased from the \$4 prescribed by the old law to \$100.

Ohio revised its Sunday law in 1959 to eliminate antiquated provisions and to make exemptions more explicit. The exemptions now include public transportation, recreation, sports, exhibitions, and state and county fairs. The Wisconsin legislature, on the other hand, rejected proposals to modernize that state's basic law and added a ban on Sunday sale of automobiles. The Utah legislature passed a strong Sunday bill but sustained the governor's veto of the measure.

⁹ Getting the question on the ballot in any county required 2,500 signatures. In counties whose voters rejected the proposal it cannot be voted on again for three years.

¹⁰ A similar law passed by the New Jersey legislature in 1958 was found unconstitutional by the state supreme court because three oceanside resort counties were exempted from its provisions.

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Sunday legislation will continue to be a hot issue in some state legislatures. The Maryland General Assembly is due to consider this year a proposal for a stiff prohibitory law, with certain specific exemptions, which was recommended last March by eight of nine members of a special governor's commission. Virginia's House of Delegates passed a bill on Feb. 8 that would ban Sunday selling of clothing, housewares, furniture, hardware, farm equipment, food items that have to be cooked, and other specified items. The bill is aimed at supermarkets and department stores that have managed to stay open under an existing law prohibiting operation of non-essential business enterprises on Sunday.

TREND OF COURT DECISIONS ON CHALLENGED LAWS

Sunday laws generally have been sustained by state and federal courts. The U.S. Supreme Court in 1896, and again in 1900, upheld the right of the states to regulate Sunday activities as a legitimate exercise of their police powers. In recent years the high court has refused on several occasions to consider appeals brought by convicted Sunday merchants who argued that they had been unfairly singled out for prosecution; the Court said in those cases that no "substantial federal question" was involved.¹¹

The question of whether Sunday laws may impair constitutional guarantees of religious freedom and separation of church and state was first brought to the Supreme Court a decade ago when two Jewish merchants appealed their conviction for breaking the New York Sunday law. The Court refused to act in that case, but recent lower court decisions have encouraged the expectation that the Supreme Court may yet see fit to rule on the issue of religious freedom in Sunday legislation.

A major development in such litigation occurred last May when a federal court by a 2-1 decision held the Massachusetts Sunday law unconstitutional because it did not give equal protection to those who observe different days of the week as the Sabbath. This was the first time any court had found a state Sunday closing law contrary to provisions of the U.S. Constitution. The defendants in the case, operators of the Crown Kosher Super Market in Springfield, Mass., had been convicted of doing business

¹¹ Sunday observance is not mentioned in the U.S. Constitution (except indirectly in the provision excluding Sunday in computing the ten days allowed the President for vetoing a bill), and there is no national legislation of consequence in this area.

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as usual on Sunday in violation of Massachusetts law, and the conviction had been upheld by the highest state court. The case engaged the active attention of Jewish and Seventh-Day Adventist organizations on one side and of Catholic and Protestant groups on the other.

Constitutionality of the new New Jersey and Pennsylvania statutes also is headed for Supreme Court consideration. The cases in both states are similar. Two Jewish merchants in Newark and two in Philadelphia, and stores in both states of the firm called Two Guys From Harrison, are challenging the validity of the laws. A New Jersey state court refused last December to grant the merchants an injunction—to save them from prosecution—while a similar case was pending before the New Jersey supreme court. A federal court in the same month held the Pennsylvania law constitutional. An appeal from that decision was filed in the U.S. Supreme Court on Feb. 12 by Two Guys From Harrison. Contending, among other things, that there was no reasonable basis for the Pennsylvania law's classification of prohibited and permitted activities, the appellants asked:

In what manner does a sale at retail differ from a sale at wholesale, justifying different Sunday treatment? If these are day-of-rest statutes, do not employees of wholesale establishments need a day of rest too? What is the distinction between commodities not listed in the act of 1959 as against those contained therein?

State courts have drawn fine lines of distinction between what is and what is not permissible under state Sunday laws. The Illinois supreme court held a local ordinance unconstitutional last November because the prosecutors failed to show that the Sunday activity disturbed the peace. The appellate division of the New York supreme court held it illegal last June 15 for the owner of a self-service laundry to keep it open on Sunday, but the same bench ruled three days later that no law was violated by a customer who operated a machine in a self-service laundry on Sunday.

The Connecticut supreme court in July 1958 upheld that state's Sunday law against a challenge on constitutional grounds brought by a storekeeper convicted of selling two candles on Sunday. The defendant asserted that the law was unfair because it did not ban the sale of antiques, but the court held that antique-buying was a recreational activ-

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ity which could be constitutionally exempted from a ban on Sunday retailing.

Constitutionality of the Virginia law is being challenged by a shopping center that was fined \$20,500—the maximum of \$500 for each of 41 Sundays since it opened—by a county court in January. Payment of the fine has been suspended until the state supreme court acts. A similar attempt to test the constitutionality of the Virginia law failed last October when the state's highest court refused to hear an appeal from a store which had been fined \$100 for selling non-essential merchandise.

Merchants forbidden to sell on Sunday sometimes complain that drug stores which open on Sunday sell many articles not in the category of necessities. The Arkansas supreme court ruled in 1956 that a constitutional test on the basis of the article sold was not valid; the drug store which sold necessities could also sell non-necessities if this was essential to the conduct of the necessary business. The court said: "It does not necessarily follow that because a druggist sells a bar of soap on Sunday, the grocer has a constitutional right to do the same."

Main Issues in Sunday Law Controversy

ISSUES in the Sunday closing law controversy are not clear-cut because attitudes toward it involve a mixture of religious convictions, commercial interests, and concepts of civil rights. It is contended in behalf of rigorous prohibitions on Sunday commercialism that the state has a right so to regulate commerce and labor as to protect one day of rest a week, and that it is justified in selecting Sunday because that is the day devoted by most citizens to worship and relaxation. Opponents of Sunday closing laws insist that they infringe the constitutional principle of separation of church and state; that they are unfair to persons whose religion bids them to observe another day of rest than Sunday; and that unavoidable exemptions result in unfair discrimination. These arguments are not new; they have been heard in periodic controversies about Sunday legislation since almost the beginning of the republic.

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OPPOSING ATTITUDES ON REGULATORY APPROACH

Tension over Sunday legislation first reached national proportions in the early part of the 19th century, when a controversy raged for 20 years as to whether Congress should forbid the opening of post offices for a time on Sunday. The Senate Post Office Committee finally submitted an adverse report on the proposed legislation in 1829 and defended its position by arguments which are still current in Sunday law debate. Such an act, the committee said, would "establish the principle that the legislature is a proper tribunal to determine what are the laws of God." This would "involve a legislative decision in a religious controversy and on a point on which good citizens may honestly differ without disturbing the peace of society."

By the middle of the 19th century, well-defined movements for and against civil sanctions on Sabbath-breaking had been formed. The American and Foreign Sabbath Union, founded in 1842, sponsored a National Sabbath Convention which was presided over by John Quincy Adams. The Lord's Day Alliance, still active in promoting Sunday laws, was organized 40 years later. The impetus for formation of these organizations came from Protestant church leaders who saw a threat to traditional religious customs in expansion of Sunday railroad operations, publication of Sunday newspapers, and holding of entertainments on Sunday. The church leaders were apprehensive also about the influx of European immigrants whose approach to Sunday obligations differed from that of earlier comers.

On the other side were influential citizens who held the strong conviction that Sunday legislation constituted a sectarian invasion of civil and religious rights. The Senate Post Office Committee had warned in its 1829 report that "Extensive religious combinations to effect a political object are . . . always dangerous." William Lloyd Garrison, in an appeal in 1848 for an American Anti-Sunday Law Convention, attacked the Sabbath Union as "animated by the spirit of religious bigotry and ecclesiastical tyranny . . . [which sought] to crush . . . the rights of conscience."

The Sunday issue came before Congress again in the 1890s. Sunday law supporters succeeded in conditioning

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an appropriation for the Chicago World's Fair on closing of the U.S. exhibit on Sunday.¹² The same issue was raised in connection with federal grants for the St. Louis Exposition of 1904 and the Jamestown Exposition of 1907.

RELIGIOUS MOTIVATION IN SUNDAY REGULATIONS

Opponents of Sunday laws contend that they violate constitutional provisions against interference with the free exercise of religion. Supporters of the statutes consider them primarily welfare rather than religious laws, or they attempt to justify them on the ground of protecting traditional customs of the majority of the people.

Sunday laws in the American colonies were unequivocally religious in purpose, being the product of a union of church and state authority. The religious justification lingered in the state laws and in court decisions upholding them, but in time the courts came to lay more stress on welfare aspects of Sunday legislation. The blend of religious and civil consideration was typified by a New York state court opinion in 1861:

The stability of government, the welfare of the subject, and the interests of society have made it necessary that the day of rest observed by the people of a nation should be uniform, and that its observance should be, to some extent, compulsory, not by way of enforcing the conscience of those upon whom the law operates, but by way of protection to those who desire and are entitled to this day. . . . For a Christian people it is highly fit and proper that the day observed should be that which is regarded as the Christian Sabbath. . . . The Christian Sabbath is, then, one of the civil institutions of the state.

Ninety years later, the appellate division of New York's supreme court denied that that state's Sunday statute was a law "respecting an establishment of religion or prohibiting free exercise thereof"; it said the law "does not set up a church, make attendance at religious worship compulsory . . . nor in any way enforce or prohibit religion."¹³

Despite such rulings, Jewish and Seventh-Day Adventist groups persist in pressing the issue of religious freedom. In his brief before the Massachusetts supreme court in the Crown Kosher Super Market case, the top legal representative of the American Jewish Congress, Leo Pfeffer, said:

¹² Actually the exhibit was closed for only a few Sundays, then kept open during litigation over the Sunday question that continued for the duration of the fair.

¹³ *People v. Friedman*, 302 N.Y. 75 (1950).

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The origin of Sunday legislation is incontrovertibly religious. Legislatures never evidence any intent to change the religious motivation of such measures. . . . Courts have consistently recognized the religious nature of Sunday legislation. . . . Sunday law statutes even today frequently use the phrase "the Lord's Day." Such designation . . . can hardly be called secular. . . . The legislative intent to aid religion by closing all roads other than those leading to church seems to us to be incontrovertible.

In a typical expression of Seventh-Day Adventist opinion, an editor of the denomination's periodical *Liberty* stated: "The civil government has no more right to prescribe the manner of the observance of the Sabbath, or of the Lord's Day, than it has to prescribe the manner of saying the Lord's Prayer, of conducting the Lord's Supper, or of administering baptism."¹⁴

The executive secretary of the New Jersey Catholic Conference urged a New Jersey legislative committee in 1958 to keep any reference to a religious objective out of the Sunday legislation then under consideration, lest its inclusion make the law constitutionally vulnerable. Other religious leaders have openly justified the religious import of Sunday laws. In a criticism of the federal court decision that found the Massachusetts law unconstitutional last year, Cardinal Cushing, Archbishop of Boston, expressed shock that "in the minds of many modern statesmen and jurists, Sunday has lost its religious significance and has thus lost the right to protection from profanation which has up to now been afforded by the law."

In our American tradition [the Cardinal said] Sunday has been . . . a day of prayer and rest . . . not . . . a civic holiday. The laws . . . reflect the belief of those who formulate them in a personal God and their acceptance of the age-old tradition that one day in seven should be set aside as the Lord's Day. It is extremely disturbing, therefore, to be confronted with this new trend of thought according to which Sunday is to become legally recognized [merely] as a day on which people may if they choose seek respite from their ordinary labors.¹⁵

Opinions differ on whether discrimination against those who observe Saturday as the Sabbath is removed by limited exemptions accorded them in some state laws. A Seventh-Day Adventist spokesman has noted that the terms of the exemptions "compel one who observes the seventh day of the week to stand court trial and prove that he

¹⁴ Charles S. Langguth, "Glaring Inconsistencies in Sunday Laws," *Liberty*, Fourth Quarter 1958, p. 29.

¹⁵ "Sunday Change Shocks God-Fearing," *The Pilot*, June 27, 1959.

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'habitually abstains . . . from following his usual occupation or business and . . . devotes the day to the exercise of religious worship.' This is said to put a religious test on Saturday observers, thus denying the equality of all religions before the law.¹⁶

Protestant clergymen, headed by the board chairman of the Protestant Council of New York City, joined Seventh-Day Adventists and Jewish rabbinical groups of the city in 1958 in support of a bill to exempt Saturday worshippers from the penalties of the Sunday closing law. The Catholic hierarchy opposed the measure and it was defeated. A similar bill has been introduced in the New York legislature this year. The Rabbinical Council of America on Feb. 10 appealed to all state legislators, New York's in particular, to adopt a "fair Sabbath law" that would exempt Saturday worshippers.

Opponents of exemptions in Sunday legislation point out that the laws do not prevent a Saturday observer from closing down his business on that day; they simply require him not to disturb the peaceful character of the day on which the majority makes its devotions. In rebuttal to this argument it is said that the law in effect imposes on the Saturday worshiper an obligation to keep his business closed two days a week, one day to meet the dictates of his conscience and another day in obeisance to the religious beliefs of others.

UNEQUAL EFFECTS ON COMMERCIAL COMPETITORS

Although religious arguments have been prominent in the debate on Sunday laws, commercial competition figures more and more in the pressure for and against them. Exemption of a large number of activities from the provisions of Sunday laws gives weight to the argument that the laws in effect do not protect the sanctity of Sunday; that they serve rather as an instrument of discrimination against particular business enterprises that incur the displeasure of a local pressure group.

In his veto message last year, Gov. Clyde of Utah said he was not convinced that a Sunday closing law would encourage young people to attend church, especially since the law allowed "beer halls" to stay open on the theory

¹⁶ Charles S. Longacre, "Glaring Inconsistencies in Sunday Laws," *Liberty*, Fourth Quarter 1958, p. 29.

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that they fell into the category of recreation. He was forced to the conclusion that "the major support [for the measure] comes from a group of retail merchants who are seeking by this means to regulate competition within their own industry." Effective enforcement would be impossible, the governor said, and "there would be widespread violations . . . tend[ing] to breed general disrespect for the law."

A law journal noted recently that Sunday laws tend to go unenforced until there is agitation against particular stores by private interests, and "this inevitably leads to discriminatory enforcement." The result is that "The blue law becomes a weapon in an economic struggle, a use scarcely conceived of by the originators of this type of legislation."¹⁷

POPULARITY OF SUNDAY AFTERNOON SHOPPING TRIPS

Some persons consider the current agitation to close down big Sunday stores a mere episode in a changing social picture. They think that a trend toward Sunday retailing on a large scale is inevitable. It is noted that many Sunday activities now widely tolerated—movies, baseball, pleasure travel—were once frowned on by custom and prohibited by law. The federal highway program is thought certain to encourage growth of roadside retailing.

There is some question as to the extent of public dismay at Sunday commercialism. Secular activities on Sunday afternoon have become widely accepted, and Sunday shopping has proved popular. In communities where movies are closed on Sunday, thousands are known to be viewing movies on television. Opponents of Sunday laws point out that consistency would require extension of bans on selling to television and radio commercials.

An increasing number of churchmen are taking the position of a Methodist minister in Atlantic City, who observed that the commandment to keep the Sabbath holy is personal and calls for no civil law. The clergyman maintained also that Protestants who put pressure on state legislatures "for our pet projects" have no grounds for challenging "the Roman Catholic hierarchy's political maneuvering."¹⁸

¹⁷ Eugene P. Chell, "Sunday Blue Laws: An Analysis of Their Position in Our Society," *Rutgers Law Review*, Spring 1958, p. 508.

¹⁸ Gilbert S. Fell, "Blue Laws—A Minority Opinion," *Christian Century*, Nov. 25, 1959, p. 1375.

